

88-1413

No.

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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In The
Supreme Court of the United States
October Term, 1986

— 0 —
JOHN STOREY, ET AL.,

Petitioners,

vs.

STATE OF GEORGIA,

Respondent.

— 0 —
ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF
THE STATE OF GEORGIA

— 0 —
PETITION FOR WRIT OF CERTIORARI

— 0 —
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QUESTION PRESENTED**I**

Whether or not this Court should grant certiorari to review the erroneous finding that Official Code of Georgia, Section 50-16-14, is not violative of the First Amendment of the United States Constitution's guarantee of rights to speech, assembly, petition of government and redress of grievances.

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I. O.C.G.A. § 50-16-14, IS VIOLATIVE OF THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION, IN THAT SAID CODE SECTION PROVIDES FOR A TOTAL BAN OF THE RIGHTS TO FREE SPEECH OR ASSEMBLY ON STATE PROPERTY, WITHOUT REGARD TO TIME, PLACE OR MANNER RESTRICTION.	4
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**ON PETITION FOR WRIT OF CERTIORARI
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PETITION FOR WRIT OF CERTIORARI

Petitioners, John Storey, Robert Johnson, William Withers, Ann Connor, Gerald Conroy, Lewis S. Sinclair, Mary Eastland and James Carter, respectfully pray that a writ of certiorari issue to review the judgment of the Court of Appeals of the State of Georgia, entered on November 24, 1986, and the denial of a timely petition for re-

hearing on December 5, 1986. A timely Petition for Writ of Certiorari to the Supreme Court of the State of Georgia was denied on January 15, 1987.

OPINIONS BELOW

The opinion in State of Georgia vs. Storey, et al., is reported at 181 Ga. App. 161, and the denial of the Petition for Writ of Certiorari to the Georgia Supreme Court is reported at — Ga. —. A copy of State of Georgia vs. Storey, et al., 181 Ga. App. 161, is included in the appendix to the instant petition as Appendix A. A copy of the opinion denying the petition for rehearing is included as Appendix B and a copy of the opinion denying the petition for a writ of certiorari is included as Appendix C.

JURISDICTION

The judgment of the Court of Appeals of the State of Georgia was entered on November 24, 1986. A timely motion for rehearing was denied on December 5, 1986 and a timely Petition for a Writ of Certiorari to the Georgia Supreme Court was denied on January 15, 1987. This petition for a writ of certiorari has been filed with the allowable sixty (60) days of the date. This Court's jurisdiction is invoked under 28 U.S.C. 1257(3).

CONSTITUTIONAL PROVISIONS

First Amendment, United States Constitution:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or of the press; or the right of the people peaceably to assemble, and petition the Government for a redress of grievances.

STATEMENT OF THE CASE

Petitioners were charged with violations of the Official Code of Georgia (O.C.G.A.) § 50-16-14, based upon their arrests at the Georgia State Capitol building on February 19th, 1985. (R-10)

Petitioners filed several pre-trial motions, including a Motion to dismiss the accusations against them based upon a constitutional attack on O.C.G.A. § 50-16-14 (Supplemental Record, P. —). The trial court granted the Petitioners Motion to Dismiss on May 13, 1986. (R-15)

The State of Georgia appealed the trial courts ruling to the Supreme Court of the State of Georgia. The Supreme Court remanded the case to the Court of Appeals of the State of Georgia. The order of the Court is included as Appendix D.

On November 24, 1986, the Court of Appeals of the State of Georgia reversed the trial court. Petitioners filed a timely Motion for Rehearing which was denied on December 5, 1986 and a timely Petition for a Writ of Certi-

orari to the Supreme Court of the State of Georgia which was denied on January 15, 1987.

Petitioners file the instant petition for a writ of certiorari challenging the final decision of the Court of Appeals of the State of Georgia.

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STATEMENT OF FACTS

The facts as alleged by the State of Georgia are as follows: That on February 19, 1985, petitioners unlawfully disrupted and interfered with the normal activities and functions of the Georgia House of Representatives at the State Capitol Building by yelling in a boisterous manner, "Stop the electrocution", and "Death is not the answer" and did fail and refuse to discontinue such conduct and leave the aforesaid premises when directed to do so by Ed Moses, Sergeant at Arms, of the Georgia House of Representatives under the direction of Jack Connell, Speaker Pro Tempore of the Georgia House of Representatives, and that said Petitioners had to be removed from the building.

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REASONS FOR GRANTING THE WRIT

I. O.C.G.A. § 50-16-14, is violative of the First Amendment to the United States Constitution, in that said code section provides for a total ban of the rights to free speech or assembly on State property, without regard to time, place or manner restrictions.

O.C.G.A. § 50-16-14, provides as follows:

The Georgia Building Authority and its security personnel and members of the Georgia State Patrol and

Georgia Bureau of Investigation are authorized and empowered to deny the entrance of any person into or upon any property or building of the authority, or the State when the person's activities are intended to disrupt or interfere with the normal activities and functions carried on in such property or building or have the potential of violating the security of the personnel therein. The authority and its security personnel and members of the Georgia State Patrol and Georgia Bureau of Investigation are authorized to deny entrance into or upon any such property or building of any person displaying any sign, banner, placard, poster, or similar device. The authority and its security personnel and members of the Georgia State Patrol and Georgia Bureau of Investigation are authorized and empowered to remove any person from any such property or building when the person's activities interfere with or disrupt the activities and the operations carried on in such property or building or constitute a safety hazard to the property or building or the inhabitants thereof. The authority and power provided in this Code section and Code Section 50-16-15 shall extend to any property or building utilized by the state or any agency thereof. Any law enforcement officer assisting the authority or any of its security personnel or members of the Georgia State Patrol and Georgia Bureau of Investigation shall have the same authority and power bestowed upon the authority by this Code Section and Code Section 50-16-15.

O.C.G.A. § 50-16-16, makes it a misdemeanor to refuse to vacate any such property or building when requested to do so.

One does not lose a First Amendment right merely because one is in a public place, such as a school, *Tinker vs. Des Moines Independent Community School District*, 393 US 503, 21 LEd2d 731, 89 SCt 733 (1969); a state capitol, *Edwards vs. South Carolina*, 372 US 229, 9 LEd2d

697, 83 SCt 680 (1963); the United States Capitol, *Jeanette Rankin Brigade vs. Chief of Capitol Police*, 342 F. Supp. 575 (DC), Summarily aff'd, 409 US 972, 34 LEd2d 236, 93 SCt 311 (1972); or the grounds of the United States Supreme Court, *United States vs. Grace*, 461 US 171, 75 LEd2d 736, 103 SCt 1702 (1983).

O.C.G.A. § 50-16-14, has no time, place and manner restrictions for the exercise of constitutionally protected activity. The ban is total and all inclusive on any property owned or used by the State of Georgia. The state property set forth in O.C.G.A. § 50-16-14 includes property that would historically be considered a public forum. This Court in *United States vs. Grace*, supra., struck down as unconstitutional 40 U.S.C. 13k. O.C.G.A., § 50-16-14, is strikingly similar to the one in *Grace*.

CONCLUSION

For all of the above and foregoing reasons, Petitioners pray that this Court grant a writ of certiorari to review the decision of the Court of Appeals of Georgia.

Respectfully submitted,

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APPENDIX A

Nov. 24, 1986

In the Court of Appeals of Georgia

73414. THE STATE v. STOREY, et al.

S-203

SOGNIER, Judge.

Storey and several other persons were charged with disrupting the legislature by shouting protestations to the death penalty and refusing to obey orders of security personnel and other law enforcement personnel to leave the State Capitol building, in violation of OCGA §§ 50-16-14 and 50-16-16. Appellees' motion to dismiss the accusations on the ground that the statutes were unconstitutional was granted, and the State filed this appeal in the Supreme Court of Georgia. The Supreme Court ruled that it does not have jurisdiction over this appeal because the only issue in the case has been decided adversely to appellees' contention of unconstitutionality. Therefore, the Supreme Court transferred the appeal to this court by order dated August 7, 1986.

Appellees' motion to dismiss was based on three grounds. First, that the statutes are so overbroad and vague that they fail to place a reasonable person on notice as to what acts are made criminal, in violation of the due process clause; second, that the statutes violate First Amendment guarantees of freedom of speech and the right of all persons to assemble peaceably and petition the government for redress of grievances; and third, that the statutes, as applied to appellees, violate the aforementioned First Amendment rights.

We have no transcript of the hearing on the motion to dismiss. However, in appellees' brief they acknowledge

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that they abandoned the first ground of their motion and that the trial court did not hear evidence on or otherwise consider the third ground of appellees' motion to dismiss. In its order, the Supreme Court also stated that appellees abandoned the first ground of their motion to dismiss and that the trial court did not hear evidence on or otherwise consider the third ground of appellees' motion to dismiss. Thus, the only issue before this court is whether §§ 50-16-14 and 50-16-16 violate First Amendment guarantees of freedom of speech and the right to assemble peaceably and petition the government for redress of their grievances. This issue has been decided adversely to appellees' contention in *State v. Boone*, 243 Ga. 416, 418-419 (1) (254 SE2d 367) (1979). Accordingly, the trial court erred by granting appellees' motion to dismiss the accusations against them.

Judgment reversed. Banke, C. J., and Birdson, P. J., concur.

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APPENDIX B

**COURT OF APPEALS
OF THE STATE OF GEORGIA**

ATLANTA,
December 5, 1986

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

73414. State of Georgia v. John Storey et al (22337, 22338, 22339, 22340, 22333, 22334, 22335, 22336, 21518, 21519 and 21520.

Upon consideration of the motion for a rehearing filed in this case, it is ordered that it be hereby denied.

**COURT OF APPEALS OF THE STATE OF GEORGIA
CLERK'S OFFICE, ATLANTA**

Dec. 5, 1986

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

/s/ Alton Hawk
Clerk.

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APPENDIX C

CLERK'S OFFICE, SUPREME COURT OF GEORGIA

Atlanta, Jan. 15, 1987

Case No. 44207. Storey et al. v. The State.

The Supreme Court today denied the writ of certiorari in this case.

All the justices concur, except Hunt, J., who dissents.

Very truly yours,

JOLINE B. WILLIAMS, Clerk

APPENDIX D

SUPREME COURT OF GEORGIA

Atlanta, August 7, 1986

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

43671. *State v. Storey et al.*

In this case the state appeals a judgment of the Fulton State Court, dismissing criminal accusations against appellees Storey and seven co-defendants. The state asserts that this court has jurisdiction of the case on appeal for the reason that the constitutionality of OCGA §§ 50-16-14 and 50-16-16 is drawn into question. However, we find that this court does not have jurisdiction.

On October 14, 1985, appellees moved to dismiss the accusations against them, challenging the constitutionality of OCGA §§ 50-16-14 and 50-16-16 on three grounds. The first of the three grounds enumerated by appellees was that the statutes are so overbroad and vague that they fail to place a reasonable person on notice to what acts are made criminal, in violation of the Due Process Clause; the second ground was that the statutes violate First Amendment guarantees of the freedom of speech and the right of the people peaceably to assemble and petition the government for a redress of grievances; and the third ground was that the statutes, as applied to these appellees, violate the foregoing enumerated First Amendment rights. The trial court heard this motion before trial, and granted it.

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On appeal, appellees have informed this court that they abandoned their first ground during the trial court's hearing on the motion. They further have informed this court that the trial court did not hear evidence on or otherwise consider their third ground.

There therefore remains only the second ground of appellees' motion to dismiss for this court to consider in determining whether it has jurisdiction of this appeal. The gist of appellees' arguments on appeal is that the statutes are facially unconstitutional because they absolutely proscribe First Amendment-protected activities on state property. This court has previously held these statutes to be constitutional as against this same attack, *State v. Boone*, 243 Ga. 416 (1, 2) (254 SE2d 367) (1976), and jurisdiction of this issue therefore lies in the Court of Appeals, *Zepp v. Mayor & Council of the City of Athens*, 255 Ga. 449 (2) (SE2d) (1986).

For the foregoing reasons, this appeal is hereby transferred to the Court of Appeals.

All the Justices concur.

SUPREME COURT OF THE STATE OF GEORGIA CLERK'S OFFICE, ATLANTA

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

/s/ Hazel E. Hallford, Deputy Clerk

